

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HERMAN LEWIS,)	NO. CV-11-324-JPH
)	
Petitioner,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION TO
vs.)	DENY WRIT OF HABEAS CORPUS
)	
SCOTT FRAKES,)	
)	
Respondent.)	

BEFORE THE COURT for resolution is the report entered on April 14, 2012, **ECF No. 14**, recommending that the Petition for a Writ of Habeas Corpus be **denied**.

On April 30, 2012, Petitioner filed objections raising the same issues, **ECF No. 16**. In his objections, Petitioner again fails to differentiate between the requirements for attempted first degree rape (with which he was charged and convicted) and first degree rape (which was not charged). Similarly, he misapprehends the elements required to prove kidnapping, as well as the elements the State was required to prove to establish second degree assault. Petitioner again argues his trial counsel was ineffective, in part because he should have raised diminished capacity rather than insanity as a defense. This claim is without merit because, although the jury convicted Mr. Lewis, defendant's expert evidence supported an insanity defense.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The recommendation (**ECF No. 14**) to deny the Petition for a
3 Writ of Habeas Corpus is **ADOPTED in its entirety**.

4 2. The Petition (**ECF No. 7**) is **DENIED**.

5 3. The Court further certifies that pursuant to 28 U.S.C.
6 § 1915(a)(3), an appeal from this decision could not be taken in
7 good faith, and there is no basis upon which to issue a
8 certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P.
9 22(b).

10 **IT IS SO ORDERED.** The District Court Executive is directed to
11 enter this Order and an Order of Judgment, forward copies to the
12 parties, and **close the file**.

13 DATED this 27th day of June, 2012.

14 s/Robert H. Whaley
15 ROBERT H. WHALEY
16 United States District Judge

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